

Update: Traffic Benchbook— Third Edition, Volume 3

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.3 Chemical Tests Under the Vehicle Code’s “Implied Consent” Provisions—§625c

B. Administering Chemical Tests Under §625c

1. Advice That Must Be Given the Person Arrested

Insert the following text before the partial paragraph at the bottom of page 31:

See also *People v Antsey*, ___ Mich ___, ___ (2006), where the Supreme Court ruled that neither dismissal nor suppression of the evidence is the appropriate remedy when a police officer violates MCL 257.625a(63)(d) by failing to advise a defendant of his or her right to demand that a person of his or her own choosing administer one of the chemical tests. Rather, the proper remedy is a court instruction, upon the defendant’s request, that the defendant’s statutory right was violated and that the jury may decide what significance to attach to this fact. *Antsey, supra* at ___. The Court so ruled because “suppression of the evidence is not an appropriate remedy for a statutory violation where there is no indication in the statute that the Legislature intended such a remedy and no constitutional rights were violated.” *Id.* at ___. This ruling overrules *People v Koval*, 371 Mich 453, 459 (1963) and its progeny, including *People v Green*, 260 Mich App 392 (2004) discussed above, which held that noncompliance with MCL 257.625a required dismissal. *Antsey, supra* at ___ n 9. *Green* remains good law, however as to the issue related to police-administered chemical testing versus independent testing.

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2. Manner of Conducting Chemical Tests

In *People v Anstey*, ___ Mich ___, ___, ___ v 9 (2006), the Supreme Court overruled *People v Koval*, 371 Mich 453 (1963) and its progeny, which included *People v Underwood*, 153 Mich App 598 (1986). Therefore, delete the paragraph beginning at the bottom of page 32 and continuing on page 33, and insert the following case summary in its place:

A person arrested for committing a crime described in §625c(1) must be given a reasonable opportunity to have someone of his or her own choosing administer a blood, urine, or breath test within a reasonable time of the arrest. Persons who exercise this right are responsible for obtaining a chemical analysis of the test sample. MCL 257.625a(6)(d). However, neither dismissal nor suppression of the evidence is the appropriate remedy when a police officer violates MCL 257.625a(6)(d) by failing to give a defendant a reasonable opportunity for an independent chemical test. *People v Anstey*, ___ Mich ___, ___ (2006). In *Anstey*, the defendant appealed his OWI conviction on the grounds that the police had prevented him from obtaining a blood test administered by a person of his own choice. *Id.* at ___. The Court of Appeals reversed the conviction, finding that the appropriate remedy for a violation of MCL 257.625a(6)(d) was dismissal. *Id.* ___. The Supreme Court disagreed, finding that the proper remedy when a trial court determines that a defendant was deprived of his or her right to a reasonable opportunity for an independent chemical test under MCL 257.625a(6)(d) is a jury instruction, upon the defendant’s request, “that the defendant’s statutory right was violated and that the jury may decide what significance to attach to this fact.” *Anstey, supra* at ____.